

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Uli Westphal

Plaintiff,

- against -

Fox News Network, LLC

Defendant.

Docket No. 18-cv-2139

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Uli Westphal (“Westphal” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Fox News Network, LLC (“Fox” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted still-life photographs. The photographs are owned and registered by Westphal, a Germany-based professional photographer. Accordingly, Plaintiff seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Westphal is a professional photographer having a usual place of business at Kuglerstrasse 31, Berlin, 10439, Germany.

6. Upon information and belief, Fox is a foreign limited liability company duly organized and existing under the laws of Delaware with a place of business at 1211 Avenue of the Americas, 2nd Floor, New York, NY 10036.

7. Upon information and belief, Fox is registered with the New York Department of State, Division of Corporations to do business in the State of New York.

8. Upon information and belief, at all times material hereto, Defendant has owned, controlled and operated its the website at the URL: www.foxnews.com (“the Website”)

9. Fox is a for-profit entity.

10. Fox publishes news content.

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

11. In 2006-2008 Westphale created and published a series of still-life fruit and vegetable photographs, including: 2006 photographs of a red pepper and tomato (“the 2006 photographs”); a 2007 photograph of an orange (“the 2007 photograph”); and a 2008 photograph of a lemon (“the 2008 photograph”) (collectively “the Photographs”). A true and correct copy of the Photographs is attached hereto as Exhibit A.

12. Westphal is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyrights thereto.

13. The 2006 Photographs were registered with the U.S. Copyright Office and were given Copyright Registration Number Va 2-070-212, effective as of September 26, 2017 (the

“Va 2-070-212 Certificate”). A true and correct copy of the Va 2-070-212 Certificate is attached hereto as Exhibit B.

14. The 2007 Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number Va 2-082-841, effective as of September 26, 2017 (the “Va 2-082-841 Certificate”). A true and correct copy of the Va 2-082-841 Certificate is attached hereto as Exhibit C.

15. The 2008 Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number Va 2-082-852, effective as of September 26, 2017 (the “Va 2-082-852 Certificate”). A true and correct copy of the Va 2-082-852 Certificate is attached hereto as Exhibit D.

B. Defendant’s Infringing Activities

16. Fox posted the Photographs on a news article in the Food and Drink section of the Website. See <http://www.foxnews.com/food-drink/2015/05/20/ugly-produce-delivery-service-to-combat-domestic-food-waste.html>) (“the News article”). Screenshots of the Photographs and the News Article as they appear on the Website are attached hereto as Exhibit E.

17. The Website generates revenue and is part of Fox’s global news distribution.

18. Defendant did not license the Photographs from Plaintiff for the News Article or any other use.

19. Defendant did not have Plaintiff’s permission or consent to publish the Photograph on its News Article.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST FOX)
(17 U.S.C. §§ 106, 501)

20. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-22 above.

21. Defendant infringed Plaintiff's copyrights in the Photographs by reproducing and publicly displaying the Photographs on the News Article. Defendant is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

22. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyrights and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

23. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

24. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

25. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Fox be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant Fox be ordered to remove the Photographs from its Website;
3. That, with regard to the First Claim for Relief, Plaintiff be awarded either: Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;
4. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 9, 2017

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